

MISC. CRIMINAL APPLICATION NO. 1340 OF 1996.

Date of decision: 22.4.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. P.S. Champenari, A.P.P., for petitioner-State.

Mr. P.D. Vyas, advocate, for respondent No.1.

Mr. N.M. Amin, advocate, for respondent No.2.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R. R. Jain, J.

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April 22, 1996.

Oral judgment:

Petitioner - State of Gujarat has preferred this application under Section 439 (2) of the Code of Criminal Procedure ("the Code" for short) for cancellation of bail. The order under challenge is dated 2.4.1996 passed by the learned Additional Sessions Judge, Rajkot, in Misc. Criminal Application No.322 of 1996. Vide this order, the respondents have been released on bail.

The respondents have been charged for commission of offences under Sections 467, 468, 471, 420, and 120-B

read with Section 511 of the Indian Penal Code for which offence has been registered at C.R.No. I-147/96 with Pradumannagar Police Station, Rajkot City.

On perusal of impugned order, it appears that the learned Judge has come to conclusion that prima facie no case is made out against respondents and, therefore, the discretion has been exercised in their favour to set them at liberty. Without examining this order on merits, the fact remains that (i) investigation is not completed and (ii) still four other accused are absconding. If some of the accused are absconding and the respondents who are co-accused, are released on bail, during the statutory period prescribed for completion of investigation under Section 167 of the Code, there are all possibilities of tampering with the prosecution evidence and, therefore, it would not be prudent to exercise discretion which may hamper the prosecution case. The period prescribed under Section 167 is very crucial within which the prosecution is required to complete investigation, collect evidence and submit report to the court. During this period if the respondents, i.e., co-accused are enlarged on bail and tamper with evidence, it may create impediment in the investigation to collect evidence and ultimately marring the prospects of fair investigation. Therefore, without going into the merits of the matter, in my view, on this sole ground, the order passed by the learned Additional Sessions Judge is required to be set aside.

In the result, the application is allowed. The impugned order dated 2.4.1996 passed by the learned Additional Sessions Judge, Rajkot, in Misc. Criminal Application No.322 of 1996 is hereby set aside. The order of bail is cancelled. However, it is made clear that on charge-sheet being filed, the respondents would be at liberty to move the trial court for regular bail in accordance with law. In the event of such application preferred by the respondents after submission of charge-sheet, the learned trial Judge would be at liberty to consider on merits without being influenced by the impugned order as well as this order. Rule made absolute accordingly.